



Notice of Request for Proposal

SOLICITATION NO.: RT08-009

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VENDOR: Distribution Copy

Arizona State Retirement System

3300 N. Central Avenue
Phoenix, AZ 85067-3910

Bob Wittsell, Procurement Manager
Arizona State Retirement System
E-Mail: bobw@azasrs.gov
Solicitation Issue Date: November 5, 2007

DISTRIBUTION COPY

Vendor Contact Name: _____

Company: _____

Address: _____

Phone: _____, **Fax:** _____

Email: _____, **Web:** _____

DESCRIPTION:

PRIVATE EQUITY LEGAL SERVICES

RFP NO. RT08-009

PROPOSAL DUE DATE:

DECEMBER 5, 2007

AT 3:00 P.M. MST

PLEASE NOTE - If this document is downloaded from the State Procurement Office (SPO) website <http://www.azspo.az.gov> . or from <http://www.azasrs.gov/web/index.do> the ASRS website, it is the responsibility of all interested in responding to this solicitation, to verify the issuance of an amendment prior to the RFP closing date. Amendments may be posted at either of the websites listed above, however it is recommended that all interested in responding to this solicitation should email Shireen Boone at ShireenB@azasrs.gov requesting to be added to the respondents list for this solicitation. In the event an amendment is issued, it will be emailed to each respondent on that list.

In accordance with A.R.S. § 41-2534, competitive sealed proposals for the materials or services specified will be received by the Arizona State Retirement System at 3300 N. Central Avenue, 13th Floor, Attn: Procurement Department, Phoenix, AZ 85067-3910, until the time and date cited. Proposals received by the correct time and date will be opened and the name of each offeror will be publicly read.


Proposals must be in the actual possession of the State on or prior to the time and date and at the location indicated above. **Late proposals will not be considered except as provided by the Arizona Procurement Code. Proposals submitted by facsimile, telegraphic or mailgram shall be rejected.**

Proposals must be submitted in a sealed envelope or package with the solicitation number and the offeror's name and address clearly indicated on the envelope or package. All proposals must be completed in ink or typewritten. Additional instructions for preparing proposal are included in this notice.


Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting the appropriate Procurement Agency. Requests should be made as early as possible to allow time to arrange the accommodation. A person requiring special accommodations may contact the solicitation contact person responsible for this procurement as identified above.

This solicitation applies to the Arizona State Retirement System and the Public Safety Personnel Retirement System.

OFFERORS ARE STRONGLY ENCOURAGED TO CAREFULLY READ THE ENTIRE SOLICITATION.

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OFFER

TO THE ARIZONA STATE RETIREMENT SYSTEM:

The Undersigned hereby offers and agrees to furnish the material, service or construction in compliance with all terms, conditions, specifications and amendments in the Solicitation and any written exceptions in the offer.

Arizona Transaction (Sales) Privilege Tax License No.:

For clarification of this offer, contact:

Federal Employer Identification No.:

Name: _____

Phone: _____

E-Mail Address:

Fax: _____

Company Name

Signature of Person Authorized to Sign Offer

Address

Printed Name

City

State

ZIP

Title

CERTIFICATION

By signature in the Offer section above, the bidder certifies:

1. The submission of the offer did not involve collusion or other anti-competitive practices.
2. The bidder shall not discriminate against any employee or applicant for employment in violation of Federal Executive Order 11246, State Executive Order 75.5 or A.R.S. §§ 41-1461 through 1465.
3. The bidder has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted offer. Failure to provide a valid signature affirming the stipulations required by this clause shall result in rejection of the offer. Signing the offer with a false statement shall void the offer, any resulting contract and may be subject to legal remedies provided by law.
4. **The bidder certifies that the above referenced organization ____ is/ ____ is not small business with less than 100 employees or has gross revenues of \$4 million or less.**
5. **The bidder certifies that the above referenced organization ____ is/ ____ is not a Minority or a Women based business as in accordance with Executive Order 2007-21 issued by Governor Napolitano. Check the following boxes that apply** ☐ **African American,** ☐ **Asian,** ☐ **Hispanic,** ☐ **Native American.**

ACCEPTANCE OF OFFER

Offer is hereby accepted.

Contractor is now bound to sell the materials or services listed by the attached contract and based upon the solicitation, including all terms, conditions, specifications, amendments, etc., and the Contractor's Offer as accepted by the Arizona State Retirement System. This contract shall henceforth be referred to as Contract No. _____. The Contractor has been cautioned not to commence any billable work or to provide any material or service under this contract until Contractor receives purchase order, contract release document or written notice to proceed.

Arizona State Retirement System

Awarded this _____ day of _____

Procurement Officer



Uniform Instructions to Offerors

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Arizona State Retirement System


3300 N. Central Avenue
Phoenix, AZ 85067-3910

1. Definition of Terms. As used in these Instructions, the terms listed below are defined as follows:

- A. *"Attachment"* means any item the Solicitation requires an Offeror to submit as part of the Offer.
- B. *"Contract"* means the combination of the Solicitation, including the Uniform and Special Instructions to Offerors, the Uniform and Special Terms and Conditions, and the Specifications and Statement or Scope of Work; the Offer and any Best and Final Offers; and any Solicitation Amendments or Contract Amendments; and any terms applied by law.
- C. *"Contract Amendment"* means a written document signed by the Procurement Officer that is issued for the purpose of making changes in the Contract.
- D. *"Contractor"* means any person who has a contract with the State.
- E. *"Days"* means calendar days unless otherwise specified.
- F. *"Exhibit"* means any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation.
- G. *"Gratuity"* means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.
- H. *"Offer"* means bid, proposal or quotation.
- I. *"Offeror"* means a vendor who responds to a Solicitation.
- J. *"Procurement Officer"* means the person duly authorized by the State to enter into and administer Contracts and make written determinations with respect to the Contract or his or her designee.
- K. *"Solicitation"* means an Invitation for Bids ("IFB"), a Request for Proposals ("RFP"), or a Request for Quotations ("RFQ").
- L. *"Solicitation Amendment"* means a written document that is authorized by the Procurement Officer and issued for the purpose of making changes to the Solicitation.
- M. *"Subcontract"* means any Contract, express or implied, between the Contractor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any material or any service required for the performance of the Contract.
- N. *"State"* means the State of Arizona and Department or Agency of the State that executes the Contract.

2. Inquiries

- A. Duty to Examine. It is the responsibility of each Offeror to examine the entire Solicitation, seek clarification in writing, and check its Offer for accuracy before submitting the Offer. Lack of care in preparing an Offer shall not be grounds for withdrawing the Offer after the Offer due date and time, nor shall it give rise to any Contract claim.
- B. Solicitation Contact Person. Any inquiry related to a Solicitation, including any requests for or inquiries regarding standards referenced in the Solicitation, shall be directed solely to the Solicitation contact person. The Offeror shall not contact or direct inquiries concerning this Solicitation to any other State employee unless the Solicitation specifically identifies a person other than the Solicitation contact person as a contact.
- C. Submission of Inquiries. The Procurement Officer or the person identified in the Solicitation as the contact for inquiries may require that an inquiry be submitted in writing. Any inquiry related to a Solicitation shall refer to the appropriate Solicitation number, page and paragraph. Do not place the Solicitation number on the outside of the envelope containing that inquiry, since it may then be identified as an Offer and not be opened until after the Offer due date and time.
- D. Timeliness. Any inquiry shall be submitted as soon as possible and at least seven days before the Offer due date and time. Failure to do so may result in the inquiry not being considered for a Solicitation Amendment.
- E. No Right to Rely on Verbal Responses. Any inquiry that results in changes to the Solicitation shall be answered solely through a written Solicitation Amendment. An Offeror may not rely on verbal responses to its inquiries.
- F. Solicitation Amendments. The Solicitation shall only be modified by a Solicitation Amendment.
- G. Pre-Offer Conference. If a pre-offer conference has been scheduled under this Solicitation, the date, time and location shall appear on the Solicitation cover sheet or elsewhere in the Solicitation. An Offeror should raise any questions they may have about the Solicitation or the procurement at that time. An Offeror may not rely on any verbal responses to questions at the conference. Material issues raised at the conference that result in changes to the Solicitation shall be answered solely through a written Solicitation Amendment.

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- H. Persons With Disabilities. Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting the Solicitation contact person. Requests shall be made as early as possible to allow time to arrange the accommodation.

3. Offer Preparation

- A. Forms: No Facsimile or Telegraphic Offers. An Offer shall be submitted either on the forms provided in this Solicitation or their substantial equivalent. Any substitute document for the forms provided in this Solicitation will be legible and contain the same information requested on the forms. A facsimile, telegraphic, mailgram or electronic mail Offer shall be rejected.
- B. Typed or Ink; Corrections. The Offer shall be typed or in ink. Erasures, interlineations or other modifications in the Offer shall be initialed in ink by the person signing the Offer. Modifications shall not be permitted after Offers have been opened except as otherwise provided under applicable law.
- C. Evidence of Intent to be Bound. The Offer and Acceptance form within the Solicitation shall be submitted with the Offer and shall include a signature by a person authorized to sign the Offer. The signature shall signify the Offeror's intent to be bound by the Offer and the terms of the Solicitation and that the information provided is true, accurate and complete. Failure to submit verifiable evidence of an intent to be bound, such as an original signature, shall result in rejection of the Offer.
- D. Exceptions to Terms and Conditions. All exceptions included with the Offer shall be submitted in a clearly identified separate section of the Offer in which the Offeror clearly identifies the specific paragraphs of the Solicitation where the exceptions occur. Any exceptions not included in such a section shall be without force and effect in any resulting Contract unless such exception is specifically referenced by the Procurement Officer in a written statement. The Offeror's preprinted or standard terms will not be considered by the State as a part of any resulting Contract.
- i) Invitation for Bids: An Offer that takes exception to a material requirement of any part of the Solicitation, including terms and conditions, shall be rejected.
- ii) Request for Proposals: All exceptions that are contained in the Offer may negatively affect the State's proposal evaluation based on the evaluation criteria as stated in the Solicitation or result in rejection of the Offer.
- E. Subcontracts. Offeror shall clearly list any proposed subcontractors and the subcontractor's proposed responsibilities in the Offer.
- F. Cost of Offer Preparation. The State will not reimburse any Offeror the cost of responding to a Solicitation.
- G. Solicitation Amendments. Each Solicitation Amendment shall be signed with an original signature by the person signing the Offer, and shall be submitted no later than the Offer due date and time. Failure to return a signed copy of a material Solicitation Amendment may result in rejection of the Offer.
- H. Federal Excise Tax. The State of Arizona is exempt from certain Federal Excise Tax on manufactured goods. Exemption Certificates will be prepared upon request.
- I. Provision of Tax Identification Numbers. Offerors are required to provide their Arizona Transaction Privilege Tax Number and/or Federal Tax Identification number, if applicable, in the space provided on the Offer and Acceptance Form and provide the tax rate and amount, if applicable, on the Price Sheet.
- J. Identification of Taxes in Offer. The State of Arizona is subject to all applicable state and local transaction privilege taxes. If Arizona resident Offerors do not indicate taxes as a separate item in the Offer, the State will conclude that the price(s) offered includes all applicable taxes.
- K. Disclosure. If the firm, business or person submitting this Offer has been debarred, suspended or otherwise lawfully precluded from participating in any public procurement activity, including being disapproved as a subcontractor with any Federal, state or local government, or if any such preclusion from participation from any public procurement activity is currently pending, the Offeror shall fully explain the circumstances relating to the preclusion or proposed preclusion in the Offer. The Offeror shall include a letter with its Offer setting forth the name and address of the governmental unit, the effective date of this suspension or debarment, the duration of the suspension or debarment, and the relevant circumstances relating to the suspension or debarment. If suspension or debarment is currently pending, a detailed description of all relevant circumstances including the details enumerated above shall be provided.
- L. Solicitation Order of Precedence. In the event of a conflict in the provisions of this Solicitation, the following shall prevail in the order set forth below:



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- i) Special Terms and Conditions;
- ii) Uniform Terms and Conditions;
- iii) Statement or Scope of Work;
- iv) Specifications;
- v) Attachments;
- vi) Exhibits;
- vii) Special Instructions to Offerors;
- viii) Uniform Instructions to Offerors.

M. Delivery. Unless stated otherwise in the Solicitation, all prices shall be F.O.B. Destination and shall include all delivery and unloading at the destination(s).

4. Submission of Offer

- A. Sealed Envelope or Package. Each Offer shall be submitted to the submittal location identified in this Solicitation, in a sealed envelope or package that identifies its contents as an Offer and the Solicitation number to which it responds. The appropriate Solicitation number shall be plainly marked on the outside of the envelope or package.
- B. Offer Amendment or Withdrawal. An Offer may not be amended or withdrawn after the Offer due date and time except as otherwise provided under applicable law.
- C. Public Record. Under applicable law, all Offers submitted and opened are public records and must be retained by the State. Offers shall be open to public inspection after Contract award, except for such Offers deemed to be confidential by the State. If an Offeror believes that information in its Offer should remain confidential, it shall stamp as confidential that information and submit a statement with its Offer detailing the reasons that information should not be disclosed. The State shall make a determination on whether the stamped information is confidential pursuant to the Arizona Procurement Code.
- D. Non-collusion, Employment, and Services. By signing the Offer and Acceptance Form or other official contract form, the Offeror certifies that:
 - i) It did not engage in collusion or other anti-competitive practices in connection with the preparation or submission of its Offer; and
 - ii) It does not discriminate against any employee or applicant for employment or person to whom it provides services because of race, color, religion, sex, national origin, or disability, and that it complies with all applicable federal, state and local laws and executive orders regarding employment.

5. Evaluation

- A. Unit Price Prevails. Where applicable, in the case of discrepancy between the unit price or rate and the extension of that unit price or rate, the unit price or rate shall govern.
- B. Taxes. All applicable taxes stated in the Offer will be considered by the State when determining the lowest bid or evaluating proposals; except when an Offeror is located outside of Arizona and is not subject to a transaction privilege or use tax of a political subdivision of this State. At all times, payment of taxes and the determination of applicable taxes and rates are the sole responsibility of the Contractor.
- C. Late Offers. An Offer submitted after the exact Offer due date and time shall be rejected.
- D. Disqualification. The Offer of an Offeror who is currently debarred, suspended or otherwise lawfully prohibited from any public procurement activity shall be rejected.
- E. Offer Acceptance Period. An Offeror submitting an Offer under this Solicitation shall hold its Offer open for the number of days from the Offer due date that is stated in the Solicitation. If the Solicitation does not specifically state a number of days for Offer acceptance, the number of days shall be ninety (90). If a Best and Final Offer is requested pursuant to a Request for Proposals, an Offeror shall hold its Offer open for ninety (90) days from the Best and Final Offer due date.
- F. Payment. Payments shall comply with the requirements of Arizona Revised Statutes Titles 35 and 41, Net 30 days. Upon receipt and acceptance of goods or services, the Contractor shall submit a complete and accurate invoice for payment from the State within thirty (30) days.

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G. Waiver and Rejection Rights. Notwithstanding any other provision of the Solicitation, the State reserves the right to:

- i) Waive any minor informality;
- ii) Reject any and all Offers or portions thereof; or
- iii) Cancel a Solicitation.

6. Award

- A. Number or Types of Awards. Where applicable, the State reserves the right to make multiple awards or to award a Contract by individual line items or alternatives, by group of line items or alternatives, or to make an aggregate award, whichever is deemed most advantageous to the State. If the Procurement Officer determines that an aggregate award to one Offeror is not in the State's best interest, "all or none" Offers shall be rejected.
- B. Contract Inception. An Offer does not constitute a Contract nor does it confer any rights on the Offeror to the award of a Contract. A Contract is not created until the Offer is accepted in writing by the Procurement Officer's signature on the Offer and Acceptance Form. A notice of award or of the intent to award shall not constitute acceptance of the Offer.
- C. Effective Date. The effective date of this Contract shall be the date that the Procurement Officer signs the Offer and Acceptance form or other official contract form, unless another date is specifically stated in the Contract.

7. Protests.

A protest shall comply with and be resolved according to Arizona Revised Statutes Title 41, Chapter 23, Article 9 and rules adopted thereunder. Protests shall be in writing and be filed with both the Procurement Officer of the purchasing agency and with the State Procurement Administrator. A protest of a Solicitation shall be received by the Procurement Officer before the Offer due date. A protest of a proposed award or of an award shall be filed within ten (10) days after the protester knows or should have known the basis of the protest. A protest shall include:

- A. The name, address and telephone number of the protester;
- B. The signature of the protester or its representative;
- C. Identification of the purchasing agency and the Solicitation or Contract number;
- D. A detailed statement of the legal and factual grounds of the protest including copies of relevant documents; and
- E. The form of relief requested.

8. Comments Welcome

The State Procurement Office periodically reviews the Uniform Instructions to Offerors and welcomes any comments you may have. Please submit your comments to: State Procurement Administrator, State Procurement Office, 15 South 15th Avenue, Suite 103, Phoenix, Arizona, 85007.



Special Instructions to Offerors

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1. **Americans with Disabilities Act.** People with disabilities may request a reasonable accommodation such as a sign language interpreter by contacting Tracy Darmer at (602) 240-5378. Requests should be made as early as possible to allow time to arrange the accommodation.
2. **Contract Applicability.** Any contract resulting from this solicitation shall be for the exclusive use of the Arizona State Retirement System Agency designated herein.
3. **Definition.** "May" denotes the permissive, "Shall" denotes the imperative, "Must" denotes the imperative.
4. **Discussions.** In accordance with A.R.S. Section 41-2534, after the initial receipt of proposals, the ASRS reserves the option to conduct discussions with those offerors who submit proposals determined by the ASRS to be reasonably susceptible of being selected for award.
5. **Minimum Qualification:**
 - A. Minimum Qualifications:
 - B. The principal attorney that the Contractor assigns to the contract will have a minimum of ten (10) years of current experience representing and working on behalf of plan sponsors or other institutional investors, and/or state or federal regulators, in preparing, negotiating and/or examining equity or private equity investment documents, such as partnership, LLC, separate account, and commingled fund agreements.
 - C. The principal attorney shall possess current experience in undertaking and overseeing the due diligence process with regard to acquisition of assets, securities, or seeking ownership interests in partnerships.
 - D. The principal attorney shall have substantial current experience with laws governing private equity investing, both within the United States and in foreign markets.
 - E. The principal attorney shall have experience and training in the review and analysis of financial information, including GAAP financial statements projections valuations, and FASB requirements in governance and accounting issues.
 - F. There will be a strong preference for the Contractor to have significant experience in Arizona law.
 - G. Contractor experience set forth in v above may be acquired either through in-house resources within the offeror's firm or through affiliation or subcontracting with another firm or firms that have the significant experience required.
6. **Proposal Format.** One (1) original, one (1) electronic copy and seven (7) copies of each proposal should be submitted on the forms and in the format specified in the RFP. The original copy of the proposal should be clearly labeled "ORIGINAL." The material should be in sequence and related to the RFP. Offeror should include a Table of Contents outlining all documents submitted in the proposal. The ASRS will not provide any reimbursement for the cost of developing or presenting proposals in response to this RFP. Failure to include the requested information may have a negative impact on the evaluation of the offeror's proposal. Please do not provide any sample reports of any kind until requested by the ASRS. The proposal should include at least the following information:
 - A. Complete response to all items contained in Exhibits A, B, and C.
 - B. A minimum of three (3) business references. References shall be verifiable and shall be able to comment on the offeror's related experience and past performance. Offeror shall provide the name, address, phone number, contact person and a brief description of the services provided for each reference. (See Exhibit A.)
 - C. Organizational Chart showing staffing of key personnel and lines of authority.
 - D. Resumes of key personnel. Resumes shall describe experience, education, certifications, licenses and other relevant information for the lead consultant and other key personnel. (See Exhibit B.)
 - E. Price Proposals – Price proposal shall be submitted on the Pricing Schedule or in a format substantially similar to the Pricing Schedule.
 - F. Completed "Offer and Acceptance."
 - G. One copy of each solicitation amendment, with signed acknowledgement, if any.
 - H. One copy of each of the previous two years of audited financial statements or two years of federal income tax returns.
 - I. The entire proposal shall be completed in number 12 font or larger.
7. **Evaluation.** The ASRS will determine responsibility of each offeror prior to evaluating proposals. Any information regarding

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the past performance, reliability and capability of the offeror may be considered to determine responsibility. If an offeror is determined to be non-responsible, the Arizona State Retirement System will notify the offeror of the determination and cite the reasons for the determination.

Proposals shall be evaluated in accordance with A.R.S. § 41-2534 (the Arizona Procurement Code). If an award is made, the contract will be awarded to the responsible offeror whose proposal is determined to be most advantageous to the ASRS, based on the criteria listed below. Evaluation factors are listed below;

- A. Depth of overall private equity legal expertise;
- B. Depth of overall ability to conduct appropriate due diligence;
- C. Ability to comprehend and analyze financial information, including GAAP, financial statements and projections, valuations and FASB requirements in governance and accounting issues;
- D. Experience in international investing transactions;
- E. Quality and reputation of consulting personnel;
- F. Quality of existing client relationships and references;
- G. Cost.

8. **Offer and Acceptance.** To allow for an adequate evaluation, the ASRS requires an offer in response to this solicitation to be valid and irrevocable for one hundred and eighty (180) days after the opening time and date.

9. **Offeror's Contact.** All questions regarding this Request for Proposal, including technical specifications, proposal process, etc., shall be directed to the Procurement Officer as indicated on the first page of this document.

Offerors may not contact the employees of the using Agency or members of the Evaluation Committee concerning this procurement while the proposal and evaluation are in process.

10. **Proposal Opening.** Proposals shall be opened on the date and time, and at the place designated on the cover page of this document, unless amended in writing by the state agency issuing the solicitation. The name of each offeror shall be read at this time. Proposals, modifications and all other information received in response to the request for proposals shall be shown only to authorized state personnel having a legitimate interest in the evaluation. After a contract award, the proposals and evaluation documentation shall be open for public inspection.


11. **Suspension or Debarment Certification.** By signing the offer section of the Offer and Acceptance page, the offeror certifies that the firm, business or person submitting the offer has not been debarred, suspended or otherwise lawfully precluded from participating in any public procurement activity with any federal, state or local government. Signing the offer section without disclosing all pertinent information about a debarment or suspension shall result in rejection of the offer or cancellation of a contract. The ASRS also may exercise any other remedy available by law.

12. **Suspension or Debarment Status.** If the firm, business or person submitting this offer has been debarred, suspended or otherwise lawfully precluded from participating in any public procurement activity with any federal, state or local government, the offeror must include a letter with its offer setting forth the name and address of the governmental unit, the effective date of the suspension or debarment, the duration of the suspension or debarment. Failure to supply the letter or to disclose in the letter all pertinent information regarding a suspension or debarment shall result in rejection of the offer or cancellation of a contract. The ASRS also may exercise any other remedy available by law.


13. **Tax Exemptions.** Federal Excise Tax: The Arizona State Retirement System is exempt from Federal Excise Tax on manufactured goods. Exemption Certificates will be prepared upon request.

A. *State and Local Transaction Privilege Taxes:* The Arizona State Retirement System is subject to all applicable state and local transaction privilege taxes. Transaction privilege taxes apply to the sale and are the responsibility of the seller to remit. Failure to collect taxes from the buyer does not relieve the seller from his obligation to remit taxes. Offerors are required to provide their Arizona Transaction Privilege Tax Number, if applicable, in the space provided on the Offer and Acceptance Form and provide the tax rate and amount, if applicable, on the Pricing Schedule.

B. *Evaluation of Offers:* All applicable taxes will be considered by the ASRS when determining the lowest bid or evaluating proposals; except when a responsive offeror which is otherwise reasonably susceptible for award is located outside of Arizona and is not subject to a transaction privilege or use tax of a political subdivision of this state. In that event all applicable taxes which are the obligation of offerors in-state and out-of-state, offerors shall be disregarded in the Contract Award. At all times, payment of taxes and the determination of applicable taxes and rates are the sole responsibility of the Contractor.

	Uniform Terms and Conditions		Arizona State Retirement System 3300 N. Central Avenue Phoenix, AZ 85067-3910
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1. **Definition of Terms** - As used in this Solicitation and any resulting Contract, the terms listed below are defined as follows:
 - A. *“Attachment”* means any item the Solicitation requires the Offeror to submit as part of the Offer.
 - B. *“Contract”* means the combination of the Solicitation, including the Uniform and Special Instructions to Offerors, the Uniform and Special Terms and Conditions, and the Specifications and Statement or Scope of Work; the Offer and any Best and Final Offers; and any Solicitation Amendments or Contract Amendments; and any terms applied by law.
 - C. *“Contract Amendment”* means a written document signed by the Procurement Officer that is issued for the purpose of making changes in the Contract.
 - D. *“Contractor”* means any person who has a Contract with the State.
 - E. *“Days”* means calendar days unless otherwise specified.
 - F. *“Exhibit”* means any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation.
 - G. *“Gratuity”* means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.
 - H. *“Offer”* means bid, proposal or quotation.
 - I. *“Offeror”* means a vendor who responds to any type of Solicitation.
 - J. *“Procurement Officer”* means the person duly authorized by the State to enter into and administer Contracts and make written determinations with respect to the Contract or their designee.
 - K. *“Solicitation”* means an Invitation for Bids (IFB), a Request for Proposals (RFP), or a Request for Quotations (RFQ).
 - L. *“Solicitation Amendment”* means a written document that is authorized by the Procurement Officer and issued for the purpose of making changes to the Solicitation.
 - M. *“Subcontract”* means any Contract, express or implied, between the Contractor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any material or any service required for the performance of the Contract.
 - N. *“State”* means the State of Arizona and Department or Agency of the State that executes the Contract.
2. **Contract Interpretation**
 - A. Arizona Law. The law of Arizona applies to this Contract including, where applicable, the Uniform Commercial Code as adopted by the State of Arizona and the Arizona Procurement Code, Arizona Revised Statutes (A.R.S.) Title 41, Chapter 23, and its implementing rules, Arizona Administrative Code (A.A.C.) Title 2, Chapter 7.
 - B. Implied Contract Terms. Each provision of law and any terms required by law to be in this Contract are a part of this Contract as if fully stated in it.
 - C. Contract Order of Precedence. In the event of a conflict in the provisions of the Contract, as accepted by the State and as they may be amended, the following shall prevail in the order set forth below:
 - i) Special Terms and Conditions;
 - ii) Uniform Terms and Conditions;
 - iii) Statement or Scope of Work;
 - iv) Specifications;
 - v) Attachments;
 - vi) Exhibits;
 - vii) Documents referenced or included in the Solicitation.
 - D. Relationship of Parties. The Contractor under this Contract is an independent Contractor. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.
 - E. Severability. The provisions of this Contract are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the Contract.

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F. No Parol Evidence. This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document.

G. No Waiver. Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.

3. **Contract Administration and Operation**

A. Records. Under A.R.S. § 35-214 and § 35-215, the Contractor shall retain and shall contractually require each subcontractor to retain all data and other records ("records") relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract. All records shall be subject to inspection and audit by the State at reasonable times. Upon request, the Contractor shall produce a legible copy of any or all such records.

B. Non-Discrimination. The Contractor shall comply with State Executive Order No. 99-4 and all other applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act.

C. Audit. Pursuant to A.R.S. § 35-214, at any time during the term of this Contract and five (5) years thereafter, the Contractor's or any subcontractor's books and records shall be subject to audit by the State and, where applicable, the Federal Government, to the extent that the books and records relate to the performance of the Contract or Subcontract.

D. Inspection and Testing. The Contractor agrees to permit access to its facilities, subcontractor facilities and the Contractor's processes for producing the materials, at reasonable times for inspection of the materials covered under this Contract. The State shall also have the right to test at its own cost the materials to be supplied under this Contract. Neither inspection at the Contractor's facilities nor testing shall constitute final acceptance of the materials. If the State determines non-compliance of the materials, the Contractor shall be responsible for the payment of all costs incurred by the State for testing and inspection.

E. Notices. Notices to the Contractor required by this Contract shall be made by the State to the person indicated on the Offer and Acceptance form submitted by the Contractor unless otherwise stated in the Contract. Notices to the State required by the Contract shall be made by the Contractor to the Solicitation Contact Person indicated on the Solicitation cover sheet, unless otherwise stated in the Contract. An authorized Procurement Officer and an authorized Contractor representative may change their respective person to whom notice shall be given by written notice and an amendment to the Contract shall not be necessary.

F. Advertising and Promotion of Contract. The Contractor shall not advertise or publish information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.

G. Property of the State. Any materials, including reports, computer programs and other deliverables, created under this Contract are the sole property of the State. The Contractor is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. The Contractor shall not use or release these materials without the prior written consent of the State.

H. Effective Date. The effective date of this Contract shall be the date that the Procurement Officer signs the Offer and Acceptance form or other official contract form, unless another date is specifically stated in the Contract.

4. **Costs and Payments**

A. Payments. Payments shall comply with the requirements of A.R.S. Titles 35 and 41, Net 30 days. Upon receipt and acceptance of goods or services, the Contractor shall submit a complete and accurate invoice for payment from the State within thirty (30) days.

B. Delivery. Unless stated otherwise in the Contract, all prices shall be F.O.B. Destination and shall include all delivery and unloading at the destinations.

C. Applicable Taxes.

i) Payment of Taxes by the State. The State shall pay only the rate and/or amount of taxes identified in the Offer and in any resulting Contract.

ii) State and Local Transaction Privilege Taxes. The State of Arizona is subject to all applicable state and local transaction privilege taxes. Transaction privilege taxes apply to the sale and are the responsibility of the seller to remit. Failure to collect taxes from the buyer does not relieve the seller from its obligation to remit taxes.



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- iii) Tax Indemnification. Contractor and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall, and require all subcontractors to hold the State harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal, and/or state and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.
- iv) IRS W9 Form. In order to receive payment under any resulting Contract, Contractor shall have a current IRS W9 Form on file with the State of Arizona.
- v) Availability of Funds for the Next Fiscal Year. Funds may not presently be available for performance under this Contract beyond the current fiscal year. No legal liability on the part of the State for any payment may arise under this Contract beyond the current fiscal year until funds are made available for performance of this Contract. The State shall make reasonable efforts to secure such funds.

5. Contract changes

- A. Authority. This Contract is issued under the authority of the Procurement Officer who signed this Contract. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials directed by an unauthorized State employee or made unilaterally by the Contractor are violations of the Contract and of applicable law. Such changes, including unauthorized written Contract amendments shall be void and without effect, and the Contractor shall not be entitled to any claim under this Contract based on those changes.
- B. Amendments. This Contract is issued under the authority of the Procurement Officer who signed this Contract. The Contract may be modified only through a Contract Amendment within the scope of the Contract unless otherwise permitted by the Special Terms and Conditions.
- C. Subcontracts. The Contractor shall not enter into any Subcontract under this Contract without the advance written approval of the Procurement Officer. The Subcontract shall incorporate by reference the terms and conditions of this Contract.
- D. Assignment and Delegation. The Contractor shall not assign any right nor delegate any duty under this Contract without the prior written approval of the Procurement Officer. The State shall not unreasonably withhold approval.

6. Risk and Liability


- A. Risk of Loss. The Contractor shall bear all loss of conforming material covered under this Contract until received by authorized personnel at the location designated in the purchase order or Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with the Contractor regardless of receipt.
- B. General Indemnification. To the extent permitted by A.R.S. § 41-621 and § 35-154, the State of Arizona shall be indemnified and held harmless by the Contractor for its vicarious liability as a result of entering into this Contract. Each party to this Contract is responsible for its own negligence.
- C. Indemnification - Patent and Copyright. To the extent permitted by A.R.S. § 41-621 and § 35-154, the Contractor shall indemnify and hold harmless the State against any liability, including costs and expenses, for infringement of any patent, trademark or copyright arising out of Contract performance or use by the State of materials furnished or work performed under this Contract. The State shall reasonably notify the Contractor of any claim for which it may be liable under this paragraph.
- D. Force Majeure.
 - i) Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injunctions-intervention-acts; or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.
 - ii) Force Majeure shall not include the following occurrences:
 - a) Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market;

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- b) Late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition; or
 - c) Inability of either the Contractor or any subcontractor to acquire or maintain any required insurance, bonds, licenses or permits.
 - iii) If either party is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practicable and no later than the following working day, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be delivered or mailed certified-return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by Contract Amendment for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.
 - iv) Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by force majeure.
- E. Third Party Antitrust Violations. The Contractor assigns to the State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to the Contractor, toward fulfillment of this Contract.

7. Warranties

- A. Liens. The Contractor warrants that the materials supplied under this Contract are free of liens.
- B. Quality. Unless otherwise modified elsewhere in these terms and conditions, the Contractor warrants that, for one year after acceptance by the State of the materials, they shall be:
 - i) Of a quality to pass without objection in the trade under the Contract description;
 - ii) Fit for the intended purposes for which the materials are used;
 - iii) Within the variations permitted by the Contract and are of even kind, quantity, and quality within each unit and among all units;
 - iv) Adequately contained, packaged and marked as the Contract may require; and
 - v) Conform to the written promises or affirmations of fact made by the Contractor.
- C. Fitness. The Contractor warrants that any material supplied to the State shall fully conform to all requirements of the Contract and all representations of the Contractor, and shall be fit for all purposes and uses required by the Contract.
- D. Inspection/Testing. The warranties set forth in subparagraphs A through C of this paragraph are not affected by inspection or testing of or payment for the materials by the State.
- E. Year 2000.
 - i) Notwithstanding any other warranty or disclaimer of warranty in this Contract, the Contractor warrants that all products delivered and all services rendered under this Contract shall comply in all respects to performance and delivery requirements of the specifications and shall not be adversely affected by any date- related data Year 2000 issues. This warranty shall survive the expiration or termination of this Contract. In addition, the defense of force majeure shall not apply to the Contractor's failure to perform specification requirements as a result of any date-related data Year 2000 issues.
 - ii) Additionally, notwithstanding any other warranty or disclaimer of warranty in this Contract, the Contractor warrants that each hardware, software, and firmware product delivered under this Contract shall be able to accurately process date/time data (including but not limited to calculation, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000 and leap year calculations, to the extent that other information technology utilized by the State in combination with the information technology being acquired under this Contract properly exchanges date-time data with it. If this Contract requires that the information technology products being acquired perform as a system, or that the information technology products being acquired perform as a system in combination with other State information technology, then this warranty shall apply to the acquired products as a system. The remedies available to the State for breach of this warranty shall include, but shall not be limited to, repair and replacement of the information technology products delivered under this Contract. In addition,

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the defense of force majeure shall not apply to the failure of the Contractor to perform any specification requirements as a result of any date-related data Year 2000 issues.

F. Exclusions. Except as otherwise set forth in this Contract, there are no express or implied warranties of merchantability or fitness.

G. Compliance With Applicable Laws. The materials and services supplied under this Contract shall comply with all applicable Federal, state and local laws, and the Contractor shall maintain all applicable licenses and permit requirements.

H. Survival of Rights and Obligations after Contract Expiration or Termination.

- i) Contractor's Representations and Warranties. All representations and warranties made by the Contractor under this Contract shall survive the expiration or termination hereof. In addition, the parties hereto acknowledge that pursuant to A.R.S. § 12-510, except as provided in A.R.S. § 12-529, the State is not subject to or barred by any limitations of actions prescribed in A.R.S., Title 12, Chapter 5.
- ii) Purchase Orders. The Contractor shall, in accordance with all terms and conditions of the Contract, fully perform and shall be obligated to comply with all purchase orders received by the Contractor prior to the expiration or termination hereof, unless otherwise directed in writing by the Procurement Officer, including, without limitation, all purchase orders received prior to but not fully performed and satisfied at the expiration or termination of this Contract.

8. State's Contractual Remedies

A. Right to Assurance. If the State in good faith has reason to believe that the Contractor does not intend to, or is unable to perform or continue performing under this Contract, the Procurement Officer may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within the number of Days specified in the demand may, at the State's option, be the basis for terminating the Contract under the Uniform Terms and Conditions.

B. Stop Work Order.

- i) The State may, at any time, by written order to the Contractor, require the Contractor to stop all or any part, of the work called for by this Contract for a period of ninety (90) Days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.
- ii) If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work. The Procurement Officer shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.


C. Non-exclusive Remedies. The rights and the remedies of the State under this Contract are not exclusive.

D. Nonconforming Tender. Materials supplied under this Contract shall fully comply with the Contract. The delivery of materials or a portion of the materials in an installment that do not fully comply constitutes a breach of contract. On delivery of nonconforming materials, the State may terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its rights and remedies under the Uniform Commercial Code, or pursue any other right or remedy available to it.

E. Right of Offset. The State shall be entitled to offset against any sums due the Contractor, any expenses or costs incurred by the State, or damages assessed by the State concerning the Contractor's non-conforming performance or failure to perform the Contract, including expenses, costs and damages described in the Uniform Terms and Conditions.

9. Contract Termination

A. Cancellation for Conflict of Interest. Pursuant to A.R.S. § 38-511, the State may cancel this Contract within three (3) years after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the State is or becomes at any time while the Contract or an extension of the Contract is in effect an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the Contractor receives

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written notice of the cancellation unless the notice specifies a later time. If the Contractor is a political subdivision of the State, it may also cancel this Contract as provided in A.R.S. § 38-511.

B. Gratuities. The State may, by written notice, terminate this Contract, in whole or in part, if the State determines that employment or a Gratuity was offered or made by the Contractor or a representative of the Contractor to any officer or employee of the State for the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about contract performance. The State, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by the Contractor.

C. Suspension or Debarment. The State may, by written notice to the Contractor, immediately terminate this Contract if the State determines that the Contractor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body.

D. Termination for Convenience. The State reserves the right to terminate the Contract, in whole or in part at any time, when in the best interests of the State without penalty or recourse. Upon receipt of the written notice, the Contractor shall immediately stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the State. In the event of termination under this paragraph, all documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State. The Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of the termination. The cost principles and procedures provided in A.A.C. R2-7-701 shall apply.

E. Termination for Default.

i) In addition to the rights reserved in the Uniform Terms and Conditions, the State reserves the right to terminate the Contract in whole or in part due to the failure of the Contractor to comply with any term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Contract. The Procurement Officer shall provide written notice of the termination and the reasons for it to the Contractor.


ii) Upon termination under this paragraph, all goods, materials, documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State on demand.

iii) The State may, upon termination of this Contract, procure, on terms and in the manner that it deems appropriate, materials or services to replace those under this Contract. The Contractor shall be liable to the State for any excess costs incurred by the State in procuring materials or services in substitution for those due from the Contractor.


F. Continuation of Performance Through Termination. The Contractor shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.

10. **Contract Claims.** All contract claims or controversies under this Contract shall be resolved according to A.R.S. Title 41, Chapter 23, Article 9, and rules adopted thereunder.

11. **Comments Welcome.** The State Procurement Office periodically reviews the Uniform Terms and Conditions and welcomes any comments you may have. Please submit your comments to: State Procurement Administrator, State Procurement Office, 15 South 15th Avenue, Suite 103, Phoenix, Arizona, 85007.

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1. **Pre-Proposal Conference:** No pre-proposal conference will be held.
1. **Proposal Opening:** Proposals shall be opened publicly at the time and place designated on the cover page of this document. The name of each offeror shall be read publicly and recorded. Prices will NOT be read. Proposals will not be subject to public inspection until after contract award.
2. **Offer Acceptance Period:** Proposals shall be irrevocable offers for one hundred eighty (180) days after the proposal due date.
3. **Term of Contract:** The term of the contract shall commence upon execution of the contract and shall remain in effect for a period of twelve (12) months thereafter unless terminated, canceled or extended as otherwise provided herein.
4. **Contract Renewal:** The contract shall not bind, nor purport to bind, the State for any contractual commitment in excess of the original contract period. The State shall have the right, at its sole option, to renew the contract for four (4) one-year periods or a portion thereof. If the State exercises such rights, all terms, conditions and provisions of the original contract shall remain the same and apply during the renewal period with the exception of price. The Contractor shall agree that the prices stated in the original contract shall not be increased **unless otherwise negotiated**.
5. **Pricing:** Pricing must be submitted in an all-inclusive basis. The State will not reimburse any item other than the all inclusive rates contained on the Pricing Schedule.
6. **Estimated Usage:** The contract shall be on an as needed, if needed basis. The State makes no guarantee as to the amount of usage.
7. **Availability of Funds for the Next Fiscal Year:** Funds are not presently available for performance under this contract beyond the current fiscal year. The State's obligation for performance of this contract beyond this fiscal year is contingent upon the availability of funds from which payment for contract purposes can be made. No legal liability on the part of the State for any payment may arise for performance under this contract beyond the current fiscal year until funds are made available for performance of this contract.
8. **Confidentiality of Records:** The Contractor shall establish and maintain procedures and controls that are acceptable to the State for the purpose of assuring that no information contained in its records or obtained from the State or from others in carrying out its functions under the contract shall be used by or disclosed by it, its agents, officers, or employees, except as required to efficiently perform duties under the contract. Persons requesting such information shall be referred to the State. Contractor also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of the Contractor as needed for the performance of duties under the contract, unless otherwise agreed to in writing by the State.
9. **Confidential Information:** If a person believes that any portion of a proposal, bid, offer, specification, protest or correspondence contains information that should be withheld, then the Procurement Officer shall be so advised in writing (Price is not confidential and will not be withheld). Such material shall be identified as confidential wherever it appears. The State, pursuant to A.C.R.R. R2-7-104, shall review all requests for confidentiality and provide a written determination. If the confidential request is denied, such information shall be disclosed as public information, unless the person utilizes the "Protest" provision as noted in A.R.S. § 41-2611 through § 41-2616.
10. **Key Personnel:** It is essential that the Contractor provide an adequate staff of experienced personnel, capable of and devoted to the successful accomplishment of work to be performed under this contract. The Contractor must assign specific individuals to the key positions. Once key personnel are assigned to work under the contract, the ASRS shall have the opportunity to review the qualifications and approve the assignment of additional or replacement key personnel.
11. **Cancellation:** The State reserves the right to cancel the whole or any part of the contract due to failure of the Contractor to carry out any term, promise, or condition of the contract. The State will issue a written ten (10) day notice of default to the Contractor for acting or failing to act as in any of the following:
 - A. The Contractor provides personnel that do not meet the requirements of the contract.
 - B. The Contractor fails to perform adequately the services required in the contract.
 - C. The Contractor attempts to impose on the State, personnel which are of an unacceptable quality.
 - D. The Contractor fails to furnish the required product within the time stipulated in the contract.
 - E. The Contractor fails to make progress in the performance of the requirements of the contract and/or gives the State a positive indication that the Contractor will not or cannot perform to the requirements of the contract.

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If the Contractor does not correct the above problem(s) within ten (10) days after receiving the notice of default, the State may cancel the contract. If the State cancels the contract pursuant to this clause, the State reserves all rights or claims to damage for breach of contract.

12. **Price Increase:** The ASRS may review a fully documented request for a price increase only after the contract has been in effect for two (2) years. The ASRS shall determine if the requested price increase is justified and in the best interest of the State of Arizona.
13. **Insurance: Indemnification Clause:** Contractor shall indemnify, defend, save and hold harmless the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees (hereinafter referred to as "Indemnatee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such Contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnatee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnatee, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the State of Arizona, its officers, officials, agents and employees for losses arising from the work performed by the Contractor for the State of Arizona.

This indemnity shall not apply if the Contractor or sub-contractor(s) is/are an agency, board, commission or university of the State of Arizona.

14. **Insurance Requirements:** Contractor and subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract, are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors.

The *insurance requirements* herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this contract by the Contractor, its agents, representatives, employees or subcontractors, and Contractor is free to purchase additional insurance.


- A. Minimum Scope And Limits Of Insurance: Contractor shall provide coverage with limits of liability not less than those stated below.

i) Commercial General Liability – Occurrence Form

Policy shall include bodily injury, property damage, personal injury and broad form contractual liability coverage.

• General Aggregate	\$2,000,000
• Products – Completed Operations Aggregate	\$1,000,000
• Personal and Advertising Injury	\$1,000,000
• Blanket Contractual Liability – Written and Oral	\$1,000,000
• Fire Legal Liability	\$ 50,000
• Each Occurrence	\$1,000,000

- a) The policy shall be endorsed to include the following additional insured language: **"The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor."**

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- b) Policy shall contain a waiver of subrogation against the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

ii) Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and/or non-owned vehicles used in the performance of this Contract.

Combined Single Limit (CSL) \$1,000,000

- a) The policy shall be endorsed to include the following additional insured language: **“The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor, involving automobiles owned, leased, hired or borrowed by the Contractor.”**

iii) Worker's Compensation and Employers' Liability

Workers' Compensation Statutory

Employers' Liability

Each Accident \$ 500,000

Disease – Each Employee \$ 500,000

Disease – Policy Limit \$1,000,000

- a) Policy shall contain a waiver of subrogation against the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.
- b) This requirement shall not apply to: Separately, EACH contractor or subcontractor exempt under A.R.S. 23-901, AND when such contractor or subcontractor executes the appropriate waiver (Sole Proprietor/Independent Contractor) form.

iv) Professional Liability (Errors and Omissions Liability)

Each Claim \$1,000,000

Annual Aggregate \$2,000,000

- a) In the event that the professional liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.
- b) Policy shall contain a waiver of subrogation against the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.
- c) The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Work of this contract.

B. Additional Insurance Requirements: The policies shall include, or be endorsed to include, the following provisions:

- i) The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees wherever additional insured status is required such additional insured shall be covered to the full limits of liability purchased by the Contractor, even if those limits of liability are in excess of those required by this Contract.
- ii) The Contractor's insurance coverage shall be primary insurance with respect to all other available sources.
- iii) Coverage provided by the Contractor shall not be limited to the liability assumed under the indemnification provisions of this Contract.



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- C. **Notice of Cancellation:** Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days prior written notice has been given to the State of Arizona. Such notice shall be sent directly to the Solicitation Contact Person identified on the cover page of this RFP, and shall be sent by certified mail, return receipt requested.
- D. **Accept Ability of Insurers:** Insurance is to be placed with duly licensed or approved non-admitted insurers in the state of Arizona with an "A.M. Best" rating of not less than A- VII. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.
- E. **Verification of Coverage:** Contractor shall furnish the State of Arizona with certificates of insurance (ACORD form or equivalent approved by the State of Arizona) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.
- All certificates and endorsements are to be received and approved by the State of Arizona before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.
- All certificates required by this Contract shall be sent directly to the Solicitation Contact Person identified on the cover page of this RFP. The State of Arizona project/contract number and project description shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE STATE OF ARIZONA'S RISK MANAGEMENT SECTION.**
- F. **Subcontractors:** Contractors' certificate(s) shall include all subcontractors as insureds under its policies or Contractor shall furnish to the State of Arizona separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.
- G. **Approval:** Any modification or variation from the insurance requirements in this Contract shall be made by the Department of Administration, Risk Management Section, whose decision shall be final. Such action will not require a formal Contract amendment, but may be made by administrative action.
- H. **Exceptions:** In the event the Contractor or sub-contractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a Certificate of Self-Insurance. If the Contractor or sub-contractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.
15. **Termination:** The State Procurement Office reserves the right to terminate the contract at any time, for the convenience of the State of Arizona, without penalty or recourse, by giving written notice to the Contractor at least thirty (30) days prior to the effective date of such termination. In the event of termination pursuant to this paragraph, all documents, data, and reports prepared by the Contractor under the contract shall, at the option of the State Procurement Office, become property of the State of Arizona. The Contractor shall be entitled to receive just and equitable compensation for that work completed prior to the effective date of termination. The Contractor shall continue to perform the contractual services after notice of termination through the termination date.
16. **Amendments:** Any change in the contract including the Scope of Work described herein, whether by modification or supplementation, must be accomplished by a formal contract amendment signed and approved by and between the duly authorized representatives of the Contractor and the State Procurement Office of the State of Arizona. Any such amendment shall specify an effective date, any increases or decreases in the amount of the Contractors' compensation if applicable and entitled as an "Amendment," and signed by the parties identified in the preceding sentence. The Contractor expressly and explicitly understands and agrees that no other method and/or no other document, including correspondence, acts, and oral communications by or from any person, shall be used or construed as an amendment or modification or supplementation to the contract.
17. **Disputes:** The contract is not subject to arbitration. The State and the Contractor shall meet to discuss and attempt to resolve any dispute. However, should the dispute go unresolved to the satisfaction of both parties, the Contractor shall have the right to pursue the Arizona Procurement Code/Administrative Appeal Process for Claims, prior to an appeal to the judicial system.
18. **Offshore Performance of Work Prohibited:** Due to security and identity protection concerns, direct services under this contract shall be performed within the borders of the United States. Any services that are described in the specifications or scope of work that directly serve the State of Arizona or its clients and may involve access to secure or sensitive data or personal client data or development or modification of software for the State shall be performed within the borders of the United


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States. Unless specifically stated otherwise in the specifications, this definition does not apply to indirect of “overhead” services, redundant back-up services or services that are incidental to the performance of the contract. This provision applies to work performed by subcontractors at all tiers.

19. **Multiple Awards:** In order to ensure adequate coverage of State Agency requirements, multiple awards may be made.
20. **Inclusive Offerors:** Offeror(s) are encouraged to make every effort to utilize subcontractors that are small, women-owned and/or minority owned business enterprise. This could include subcontracts for percentage of the goods and services provided to the ASRS. Offerors who are committing a portion of their work to such subcontractors shall do so by identifying the type of services and work to be performed by providing detail concerning your organization’s utilization of small, women-owned and/or minority business enterprises. Emphasis should be placed on specific areas that are subcontracted and percentage of contract utilization and how this effort will be administered and managed, including reporting requirements.
21. **Federal Immigration and Nationality Act 2:** The contractor shall comply with all federal, state and local immigration laws and regulations relating to the immigration status of their employees during the term of the contract. Further, the contractor shall flow down this requirement to all subcontractors utilized during the term of the contract. The State shall retain the right to perform random audits of contractor and subcontractor records or to inspect papers of any employee thereof to ensure compliance. Should the State determine that the contractor and/or any subcontractors be found noncompliant, the State may pursue all remedies allowed by law, including, but not limited to; suspension of work, termination of the contract for default and suspension and/or debarment of the contractor.
22. **IT 508 Compliance:** Any electronic or information technology offered to the State of Arizona under this solicitation shall comply with A.R.S. §§ 41-2531 and 2532 and Section 508 of the Rehabilitation Act of 1973, which requires that employees and members of the public shall have access to and use of information technology that is comparable to the access and use by employees and members of the public who are not individuals with disabilities. Any exceptions shall be declared in writing in the offer.
23. **Arizona Supreme Court Rules of Professional Conduct:** The contractor agrees to comply with ER 1.7 of the Arizona Supreme Court Rules of Professional Conduct as set forth below:
 - A. Except as provided in paragraph (2), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if: 1) the representation of one client will be directly adverse to another client; or 2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer’s responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.
 - B. Notwithstanding the existence of a concurrent conflict of interest under paragraph (1), a lawyer may represent a client if each affected client gives informed consent, confirmed in writing, and: 1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client; 2) the representation is not prohibited by law, and 3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal.
24. **Disclosure:** Legal counsel shall fully disclose any past or current relationship between the ASRS Private Equity consultant, currently Ennis Knupp, Franklin Park and Meketa Investment Group, or any of its principals and legal counsel. Legal counsel shall also fully disclose any past or current relationship between legal counsel and a manager, principal of the manager or affiliate of any manager retained by the ASRS in connection with its private equity holdings. Legal counsel shall make the disclosure upon the ASRS providing legal counsel with the identities of private equity consultants and managers.
25. **Authorized Users of This Contract:** The ASRS and the Public Safety Personnel Retirement System are authorized users of this contract, provided that valid contracts have been awarded under this solicitation. Any references within this solicitation to the ASRS, such as pricing, scope of work, terms and conditions, proposal requirements, etc., may also be applied to the PSPRS unless otherwise differentiated.

	Scope of Work		Arizona State Retirement System 3300 N. Central Avenue Phoenix, AZ 85067-3910
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1. **Background.** The Arizona State Retirement System (hereinafter ASRS), a \$28 billion (May 15, 2007) multi-asset class investment public pension fund, has engaged by contract a private equity consultant (hereinafter "Consultant") to provide general private equity investment advice as needed. On October 20, 2006, the ASRS Board approved the new asset allocation to include private equity investments. Approximately 5% will be allocated to this sector.
2. **Introduction to ASRS.** The ASRS is ranked as one of the top pension funds in the United States. There are over 487,000 members of which over 74,500 are retired. The ASRS encompasses the state, including 3 state universities, all 10 community colleges, 15 counties and most cities, towns and school districts. Further information about the ASRS may be found at the ASRS website, www.azasrs.gov.
 - A. The ASRS Vision – For the benefit of our members, the ASRS will be a leading state benefit plan administrator in the areas of Core Member Services, Funded Status, Investment Performance and Operational Effectiveness. This will be accomplished while keeping program benefits and associated costs relatively aligned and maintaining actuarial and fiscal integrity. As a result, the following are the ASRS investment goals:
 - B. Broad Investment Goals:
 - Achieve a total fund rate of return equal to or greater than the actuarial assumed interest rate.
 - Achieve a total fund rate of return equal to or greater than the asset allocation benchmark.
 - Achieve a total fund rate of return equal to or greater than the amount projected in the most recent asset allocation study.
 - Achieve asset class net rates of return equal to or greater than their respective broad asset class benchmarks.
 - Achieve portfolio-level net rates of return equal to or greater than their respective portfolio benchmarks.
 - Ensure sufficient monies are available to meet cash flow requirements.
3. **Introduction to PSPRS.** The PSPRS is a public pension plan for public safety personnel and also includes elected officials and corrections officers retirement. Further information about the PSPRS may be found at www.psprs.com.
4. **Legal Services to be Provided.** The Contractor shall perform the following services as part of the basic fee package:
 - A. Investment Manager Selection
 - Review of "Key Personnel" (Up to 5 People) Background Check
 - Evaluate potential or actual implications of any legal action, either by private parties or regulatory bodies, taken against manager, including principals, within the last five (5) years.
 - B. Administration / Planning
 - Evaluate PPM, Solicitation Agreement & Partnership Agreement
 - Identify T&C changes required to minimize Cost and performance Risk to the ASRS
 - C. Documentation
 - Negotiate with General Partners, Review and prepare final Solicitation Agreement, Partnership Agreement, Comment Letter and Side Letter(s).
 - The above process will require coordination with ASRS' Legal Counsel, Consultant Advisor, and Executive Staff.
 - D. On-going Portfolio Management and Dispute Resolution
 - Attending one-to-two meetings per year in order to keep informed of business objectives.
 - Respond to requests by staff to determine strategy and costs for dispute resolution.
 - E. Litigation
 - The Contractor shall not assist the ASRS with litigation without written authorization from the Director of the ASRS.
 - F. Other Legal Services
 - At the request of the ASRS, provides legal review, drafting of documents and legal advice relating to private equity not covered elsewhere in this scope of work. Conducts research and analysis of various issues that ASRS may from time to time have an interest in. Examples may include 144A registration regulations, US and Foreign Tax policies, etc.

	Pricing Schedule		Arizona State Retirement System 3300 N. Central Avenue Phoenix, AZ 85067-3910
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PRICING SCHEDULE

For each section of the Scope of Work except E., provide two types of pricing; hourly and fixed price.

A. Investment Manager Selection: Hourly _____ Fixed Price _____

B. Administration / Planning: Hourly _____ Fixed Price _____

C. Documentation Hourly _____ Fixed Price _____

D. Ongoing Portfolio Management and Dispute Resolution

E. Hourly _____ Fixed Price _____

Other Legal Services Hourly _____


F. Travel and incidental expenses will be reimbursed at actual amounts and according to State of Arizona Travel regulations.

G. Ceiling Price: Services A-E above may, at the discretion of the ASRS, be performed on a time and materials or hourly basis with a ceiling price that the Contractor exceeds at its own risk unless the ASRS provides the Contractor with written authorization that it is authorized to exceed the ceiling price. The Contractor shall inform the ASRS in writing immediately upon performing 80% of the hours included in the ceiling price, and shall include an estimate of the percentage of the assignment it has completed.

The ASRS reserves the right to select the pricing method that is most advantageous to the ASRS.

Signature

Date

	Exhibit A - Offeror's Experience		Arizona State Retirement System
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INFORMATION TO BE PROVIDED

FOR REFERENCES

1. Contract Title (if applicable): _____

2. Contract Period: From _____ To _____

3. Geographic Area Served: _____

4. Scope of Work:

5. Reference:

Company: _____


Individual/Title: _____

City: _____ State: _____

Telephone: _____

Email Address: _____

Website Address: _____

	Exhibit A - Offeror's Experience		Arizona State Retirement System
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INFORMATION TO BE PROVIDED

FOR REFERENCES

1. Contract Title (if applicable): _____

2. Contract Period: From _____ To _____

3. Geographic Area Served: _____

4. Scope of Work: _____

5. Reference: _____

Company: _____


Individual/Title: _____

City: _____ State: _____

Telephone: _____

Email Address: _____

Website Address: _____

	Exhibit A - Offeror's Experience		Arizona State Retirement System
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INFORMATION TO BE PROVIDED

FOR REFERENCES

1. Contract Title (if applicable): _____

2. Contract Period: From _____ To _____

3. Geographic Area Served: _____

4. Scope of Work:

5. Reference:

Company: _____

Individual/Title: _____

City: _____ State: _____

Telephone: _____

Email Address: _____

Website Address: _____



Exhibit B - Personnel Staffing

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STAFF MEMBER	BACKGROUND AND EXPERTISE OF PERSONNEL
1. (NAME) (TITLE)	
2. (NAME) (TITLE)	
3. (NAME) (TITLE)	
4. (NAME) (TITLE)	
5. (NAME) (TITLE)	
6. (NAME) (TITLE)	
7. (NAME) (TITLE)	
8. (NAME) (TITLE)	
9. (NAME) (TITLE)	

* Attach a resume for each individual, plus a "brief" of all similar projects each individual has had actual "hands-on" experience.

	Exhibit C - Narrative		Arizona State Retirement System 3300 N. Central Avenue, Suite 1300 Phoenix, AZ 85012
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NARRATIVE ON THE APPROACH TO THE SCOPE OF WORK

Offerors should respond to the Scope of Work point by point by numerical reference, a pert chart may be included

**End of Solicitation
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